FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT NAGPUR
SECOND APPEAL NO: 208/2004
(Gajanan Wasudeorao Mali vs. Bhagwantrao Baliram Mali)

Office Notes, Office Memorandum of Coram appearances, Court's orders of directions and Registrar's orders.	Court's or Judges Order

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Mr. S.V.Sohoni, Adv.for appellant
Mr. S.A. Balapure, Adv.for Respondent

CORAM: SMT. Vasanti A. Naik, J.
DATED: 30th AUGUST, 2007.

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Appellant is the original defendant. The suit was filed by the plaintiff for specific performance of contract of sale of property admeasuring 44R and 33R. According to plaintiff, he had paid earnest amount of Rs. 7,500/- at the time of execution of agreement of sale and the balance amount of Rs. 12,500 was due and payable at the time of execution of the sale deed. The plaintiff pleaded that he was ready and willing to perform his part of the contract, but defendant failed to perform his part and, therefore, the suit was instituted. The defendant denied the claim of the plaintiff and pleaded that

the transaction effected by the agreement of sale dated 21.5.1994 was not pertaining to sale transaction but the agreement of sale was executed for the security of the loan advanced by the plaintiff to the defendant. The defendant, in effect, pleaded that the transaction between the plaintiff and the defendant was a money lending transaction. On the aforesaid pleadings, the defendant prayed for dismissal of the suit.

On the pleadings of the parties, the trial Court framed the issues and held that the plaintiff was ready and willing to perform his part of the contract. The Court further held that the defendant had failed in proving that the transaction between the plaintiff and the defendant as witnessed by the agreement of sae dated 21.5.1994 was not, in fact, a money lending transaction but held that it was indeed an agreement of sale as pleaded by the plaintiff. The Court further held that the defendant had failed to perform his part of the contract and, therefore, the suit filed by the plaintiff was decreed .

The defendant challenged the judgment and decree passed by the trial Court in an appeal.

The First Appellate Court by the judgment dated 19.3.2004 upheld the finding recorded by the trial Court and dismissed the appeal filed by the defendant with costs. Both the Courts have properly appreciated the material evidence tendered by the parties on record to arrive at the aforesaid finding. The findings recorded by both the Courts are pure findings of fact which do not give rise to any substantial question of law. The Second Appeal is, therefore, dismissed with no orders as to costs.

JUDGE

sahare